IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

OP.No. 18698 of 1998(A)

PETITIONERS:
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1. **M.BALAKRISHNAN NAIR,**
   EDUCATIONAL AGENCY AND MANAGER,
   UPPER PRIMARY SCHOOL, PULIMATH.

2. **LALITHAMBIKA,**
   KRISHNAVILASOM, PULIMATH,
   TRIVANDRUM DISTRICT.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE**
   CHIEF SECRETARY TO GOVERNMENT,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   THIRUVANANTHAPURAM.

3. **ASSISTANT EDUCATIONAL OFFICER, KILIMANOOR.**

4. **THE DY.TAHSILDAR (R.R.), CHIRAYINKIL,**
   THIRUVANANTHAPURAM.

5. **B.SREEKUMARAN NAIR,**
   INDIRA SADAN, T.C.3/1613, KESAVADASAPURAM,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMAR for R1 to R4
BY ADV. SRI.R.RENJITH for R5

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER ON C.M.P.NO.33016/1998, I.A.NO.17744/2006 AND I.A.NO.10307/2007 IN O.P.NO.18698/1998 A

DISMISSED

19/10/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE SENIORITY LIST OF THE SCHOOL FOR THE PERIOD 1984.**

EXT.P2: **COPY OF THE CHARGE MEMO DTD. 5/04/1995 OF THE MANAGER, U.P.S., PULIMATH.**

EXT.P3: **COPY OF THE ORDER DTD. 23/02/1996 PASSED BY THE 1ST RESPONDENT.**

EXT.P4: **COPY OF JUDGMENT IN O.P.6454/1996 DTD. 10/04/1996 OF THIS HON'BLE COURT.**

EXT.P5: **COPY OF ORDER G.O.(RT) NO.3078/96/G.EDN. DTD. 24/09/1996 OF THE GOVERNMENT.**

EXT.P6: **COPY OF SHOW CAUSE NOTICE DTD. 3/10/1996 BY THE MANAGER PULIMATH UPPER PRIMARY SCHOOL TO THE 1ST PETITIONER.**

EXT.P7: **COPY OF PROCEEDINGS DTD. 19/10/1996 MANAGER, PULIMATH UPPER PRIMARY SCHOOL TO THE PETITIONER.**

EXT.P8: **COPY OF ORDER DTD. 9/12/1996 OF THE GOVERNMENT.**

EXT.P9: **COPY OF ORDER G.O.RT.NO.1927/97/G.EDN.DTD.12/06/1997 OF THE GOVERNMENT.**

EXT.P10: **COPY OF THE PROCEEDINGS OF THE DY.DIRECTOR (EDN.), TRIVANDRUM.**

EXT.P11: **COPY OF ORDER DTD. 28/04/1998 OF THE GOVERNMENT.**

EXT.P12: **COPY OF COMPLAINT FILED BY THE 1ST PETITIONER TO THE SECRETARY TO GOVT.**

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EXT.P13: COPY OF REPRESENTATION DTD. 25/04/1997 FILED BY THE 1ST PETITIONER TO SECRETARY, EDN. DEPARTMENT.

EXT.P14: COPY OF DEMAND NOTICE ISSUED BY THE 4TH RESPONDENT DTD. 26/07/97.

EXT.P15: COPY OF THE LETTER DTD. 1/08/2006 SUBMITTED BEFORE THE DISTRICT EDUCATIONAL OFFICER, ATTINGAL.

EXT.P16: COPY OF THE LETTER NO.1/8440/97 DTD. 24/11/2006 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, ATTINGAL.

EXT.P17: COPY OF THE SHOW CAUSE NOTICE DTD. 20/11/2006 ISSUED TO THE 5TH RESPONDENT.

EXT.P18: COPY OF THE EXPLANATION SUBMITTED BY THE 5TH RESPONDENT DTD. 24/11/2006.

EXT.P19: COPY OF THE COMPLAINT RECEIVED FROM ONE OF THE PARTNER DTD. NIL.

EXT.P20: COPY OF STAFF FIXATION ORDER FOR THE YEAR 1992-'93.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 1984-85 SANCTIONED TO PULIMATH UPPER PRIMARY SCHOOL DTD. 15/07/1984 ISSUED BY THE 2ND RESPONDENT.

EXT.R5(B): COPY OF THE APPOINTMENT ORDER OF THE 5TH RESPONDENT AS HEADMASTER OF UPPER PRIMARY SCHOOL, PULIMATH DTD. 1/04/1993 ISSUED BY THE 2ND PETITIONER.

EXT.R5(C): COPY OF THE ORDER OF APPROVAL ISSUED BY THE 3RD RESPONDENT DTD. 8/06/1993.

EXT.R5(D): COPY OF THE ORDER DTD. 15/07/1978 ISSUED BY THE ASST.EDUCATIONAL OFFICE, KILIMANOOR.

EXT.R5(E): COPY OF THE CERTIFICATE DTD. 24/04/1989 ISSUED TO ME BY THE UNIVERSITY OF KERALA.

EXT.R5(F): COPY OF THE ORDER DTD. 6/01/2004 PASSED BY THE DISTRICT EDUCATIONAL OFFICER, THIRUVANANTHAPURAM.

EXT.R5(G): COPY OF THE ORDER DTD. 12/06/1997 PASSED BY THE SECRETARY, DEPARTMENT OF GENERAL EDUCATION, THIRUVANANTHAPURAM.

EXT.R5(H): COPY OF THE ORDER PASSED BY THE DEPUTY DIRECTOR OF EDUCATION, THIRUVANANTHAPURAM, DISQUALIFYING THE 2ND PETITIONER FROM ACTING AS MANAGER.

EXT.R5(I): COPY OF THE ORDER DGD. 2/2/2006 PASSED BY THIS HON'BLE COURT IN O.P.NO.1811 OF 2003.

EXT.R5(J): COPY OF THE ORDER DTD. 13/02/2006 PASSED BY THIS HON'BLE COURT IN O.P.NO.18698 OF 1998.

EXT.R5(K): COPY OF THE REPORT DTD. 15/05/2006 SUBMITTED BY THE ASSISTANT EDUCATIONAL OFFICER, KILIMANOOR.

EXT.R5(L): COPY OF THE SAID COMMUNICATION DTD. 7/08/2006 ISSUED BY A.E.O., KILIMANOOR.

EXT.R5(M): COPY OF THE ORDER DTD. 12/04/2007 IN C.C.C.343 OF 2007.

/TRUE COPY/

P.S.TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.18698 of 1998-A

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Dated this the 19th day of October, 2007.

JUDGMENT

1.The fifth respondent joined service as a Part-time Sanskrit Teacher in an Upper Primary School of which, the first petitioner is the educational agency and the second petitioner was the then Manager. The materials on record show that the fifth respondent was, thereafter, treated as full-time and was, later, appointed as a temporary teacher, such appointment having been approved by the statutory authorities.

2.Later on, a vacancy of the Headmaster of the School arose and the fifth respondent was appointed by promotion to that post. That order of appointment was approved by the departmental authorities.

3.Thereafter, the Manager placed the fifth

respondent under suspension on certain counts of indiscipline. The minimum period of 15 days of suspension could not have been extended in terms of the statutory rules without the concurrence of the departmental officials. Such concurrence was refused. This means that the Manager was duty bound to treat that the suspension no more exists. The fifth respondent was entitled to continue to officiate as the Headmaster of the School, of course, pending finalisation of the disciplinary proceedings. However, the Manager challenged that decision of the educational officer refusing to grant permission to extend the period of suspension. The Government, ultimately, concluded that the fifth respondent was entitled to be put back in office and the disciplinary proceedings to continue.

4.Thereafter, the Manager, in the process of acting on the Governmental decision, however, came to a conclusion for himself, that the initial administrative action taken by him to appoint the

fifth respondent as the Headmaster was not in accordance with law because, according to the Manager, the fifth respondent had not acquired B.Ed. qualification on the date of occurrence of the vacancy of the Headmaster. According to the Manager, he therefore reviewed the earlier order appointing the fifth respondent as Headmaster and directed the fifth respondent to take charge as a Part-time Sanskrit Teacher. That decision was challenged by the fifth respondent and was stayed by the Government. Ultimately, the Government issued Ext.P9 order concluding that the Manager was duty bound to give effect to the earlier decisions of the Government. The decision of the Manager reviewing his earlier decision regarding the appointment of the fifth respondent as Headmaster was cancelled by the Government. The Manager was directed to reinstate the fifth respondent as Headmaster with effect from 21-6-1995, with all monetary benefits. As a consequence, the educational officer was directed to initiate action under Rule 7 of Chapter III of

the Kerala Education Rules against the petitioners.

5.This followed a show cause notice being issued to the management, leading ultimately to Ext.P10 whereby it has been found that the second petitioner, the then Manager was incompetent to continue in that post and was disentitled to be appointed any further as the Manager in relation to any school. First respondent, educational agency, was ordered to reimburse to the Government the amounts that were paid to the fifth respondent on account of his reinstatement as Headmaster with effect from 21-6-1995 and to then make appointment of another Manager. That has resulted in Ext.P14 revenue recovery proceedings. This is impugned.

6.The Government have filed counter affidavit. The fifth respondent has also placed pleadings by way of counter affidavit to different interlocutory applications. Different materials are also

placed on record by the parties.

7.The learned counsel for the petitioners argued that the decision of the Government that the Manager could not have reviewed the earlier order of appointment is unsustainable in as much as the power to take an administrative decision includes the power to review it. Secondly, it was argued that, he having accepted the enquiry report exonerating the fifth respondent of all charges, there is no malice in the Manager. Thirdly and more importantly, the learned counsel for the petitioners argued that, even on the materials placed on record by the fifth respondent, it appears to be apparent that the fifth respondent did not have the B.Ed. qualification as on the date of occurrence of the vacancy of Headmaster and that, therefore, he was justified in reviewing his earlier order appointing the fifth respondent.

8.During the course of proceedings in this writ

petition, an interim order was issued on 2-2-2006 ordering immediate reinstatement of the fifth respondent as Headmaster and directing that he be put in charge of that office. This was, obviously, because, though the revenue recovery proceedings against the fifth respondent stood stayed, the writ petitioners were duty bound to ensure that the fifth respondent is not put to further peril by keeping him out of service.

9. The question whether an order of appointment by a Manager is an administrative order which could be subjected to a review at his hands, does not require to be gone into in this case for the simple reason that the order of appointment of the fifth respondent as Headmaster on 1-4-1993 had merged in the statutory orders issued by the departmental authorities approving that appointment. Once an administrative order of the Manager of a school merges in the statutory orders of the departmental officials in terms of Kerala Education Act and Kerala Education Rules,

that merger takes away the right, if any, of the Manager to further review his order because, it no more continues to be merely an order of appointment, that continues to be an approved appointment order, which has a statutory force.

10.The disciplinary proceedings against the fifth respondent led to an enquiry being conducted. The enquiry officer concluded that the fifth respondent was not guilty of the charges. That enquiry report was accepted and the Manager closed the enquiry proceedings. May be that, such stand of the Manager shows that there was no malice on the Manager, as against the fifth respondent. But that is too feeble a ground to conclude in favour of the petitioners.

11.In answer to the question whether the fifth respondent had possessed B.Ed. degree with sufficient years of experience as on the date of occurrence of vacancy of Headmaster, the learned counsel for the fifth respondent pointed out

that the fifth respondent has a specific case in the counter affidavit that he was the senior-most teacher in the school and therefore, even if he did not possess B.Ed. qualification, he was entitled to be appointed as the Headmaster as the first preferred candidate. Secondly, it was pointed out that though the degree certificate was issued some time in 1989, the examination was conducted in 1987. However, this issue no more survives because, I have already held that the Manager was not entitled to review the appointment order because, that had already merged in the approval orders issued by the departmental authorities. Such approval order having been issued, the question as to the qualification of the fifth respondent cannot be made an issue at the instance of the Manager. For that reason, the said argument is rejected.

12. On to the question whether the proceedings against the Manager, including for recovery, would stand, Rule 7 of Chapter III KER, would

advise that the Government have the authority to ensure that the Educational Agency and the Manager are proceeded against on different counts under that provision. Among them are grounds referable to mismanagement, maladministration, disobedience of departmental instructions, failure to obey instructions issued by the Department in relation to different matters and keeping a teacher under suspension beyond the period of 15 days, disobeying the orders of reinstatement of such incumbents, passed by the departmental officials. Having regard to the reasons stated in Exts.P9 and P10, it is beyond any pale of doubt that the Manager and the educational agency committed acts which could have given the jurisdictional situation to impose recovery in terms of that rule. That power has been exercised by the competent authority after adverting to and considering all relevant materials. Having found the other contentions of the Manager and the educational agency as unsustainable, I find no reason to

interfere with the impugned Exts.P10 and P14.

In the result, the writ petition fails. The same is accordingly dismissed. No costs. It is however directed that enforcement of the revenue recovery proceedings will be held back, if the petitioners pay the entire outstandings in four equal monthly instalments payable on or before the last working day of every month commencing from November, 2007, without fail. If there is default in payment of any of the instalments as aforesaid, the aforesaid benefit shall stand recalled automatically and the respondents will be at liberty to enforce the revenue recovery proceedings, without further notice to the petitioners.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.18698 of 1998-A

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JUDGMENT

Dated: 18th October, 2007.